

Internal Revenue Service

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Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B02

PLR-144916-07

Date:

February 27, 2008

Legend

X =

Trust1 =

Trust2 =

Trust3 =

Trust4 =

Trust5 =

Trust6 =

Trust7 =

Trust8 =

Trust9 =

Trust10 =

Trust11 =

Trust12 =

Trust13 =

Trust14 =

Trust15 =

Trust16 =

Trust17 =

Trust18 =

Trust19 =

Trust20 =

Trust21 =

Trust22 =

A =

I =

a =

b =

c =

d =

e =

f =

State =

Date1 =

Date2 =

Date3 =

Date4 =

Date5 =

Date6 =

Dear :

This responds to a letter dated October 1, 2007, and subsequent correspondence, submitted on behalf of X by X's authorized representative, requesting a ruling under §1362(f) of the Internal Revenue Code.

The information submitted states that X was incorporated under the laws of State on Date1, and elected to be an S corporation effective Date2. On Date3, A, a shareholder of X, transferred a shares of X stock to each of Trust1, Trust2, Trust3, Trust4, Trust5, Trust6, Trust7, Trust8, Trust9, Trust10, Trust11, Trust12, Trust13, Trust14, Trust15, Trust16, Trust17, Trust18, Trust19, Trust20, and Trust21. On Date4, A transferred an additional a shares of X stock to each of these trusts. On Date5, A transferred b shares of X stock to each of these trusts. Also on Date5, A transferred b shares of X stock to Trust22. On Date6, T, another shareholder of X, transferred c shares of X stock to each of Trust12, Trust13, Trust14, Trust15, Trust16 and Trust18, d shares of X stock to each of Trust19 and Trust21, e shares of X stock to each of Trust17 and Trust20, and f shares of X stock to Trust22.

X represents that Trust1, Trust2, Trust3, Trust4, Trust5, Trust6, Trust7, Trust8, Trust9, Trust10, Trust11, Trust12, Trust13, Trust14, Trust15, Trust16, Trust17, Trust18, Trust19, Trust20, Trust21 and Trust22 qualify to be treated as a qualified subchapter S trusts (QSSTs) described in § 1361(d), except that the beneficiary of each respective trust failed to make the election under § 1361(d)(2). Therefore, these trusts were not eligible S corporation shareholders, and X's S corporation election terminated on Date3. Moreover, X's S corporation election would have terminated on Date4, Date5, or Date6, due to the transfers of X stock to the trusts on those dates, had the election not already terminated on Date3.

X represents that X and X's shareholders (including the beneficiaries of Trust1, Trust2, Trust3, Trust4, Trust5, Trust6, Trust7, Trust8, Trust9, Trust10, Trust11, Trust12, Trust13, Trust14, Trust15, Trust16, Trust17, Trust18, Trust19, Trust20, Trust21 and Trust22) have filed tax returns consistent with X being an S corporation and with the trusts treated as QSSTs. X further represents that the circumstances resulting in the termination of X's S corporation election were inadvertent and were not motivated by tax avoidance or retroactive tax planning. X and each person who was or is a shareholder of X at any time since Date3 agree to make any adjustments (consistent with the treatment of X as an S corporation) as may be required by the Secretary with respect to such period.

Section 1361(a)(1) provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1361(b)(1)(B) provides that a "small business corporation" means a domestic corporation that is not an ineligible corporation and that does not have as a

shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual.

Section 1361(c)(2)(A)(i) provides that for purposes of § 1361(b)(1)(B), a trust, all of which is treated (under subpart E of part I of subchapter J of Chapter 1) as owned by an individual who is a citizen or resident of the United States, may be an S corporation shareholder. Section 1361(c)(2)(B)(i) provides that for purposes of § 1361(b)(1), in the case of a trust described in § 1361(c)(2)(A)(i), the deemed owner shall be treated as the shareholder.

Section 1361(c)(2)(A)(iii) provides that for purposes of § 1361(b)(1)(B), a trust, with respect to stock transferred to it pursuant to the terms of a will, but only for the 2-year period beginning on the day on which such stock is transferred to it, may be an S corporation shareholder. Section 1361(c)(2)(B)(iii) provides that for purposes of § 1361(b)(1), in the case of a trust described in § 1361(c)(2)(A)(iii), the estate of the testator shall be treated as the shareholder.

Section 1361(d)(1) provides that in the case of a QSST with respect to which a beneficiary makes an election under § 1361(d)(2), such trust shall be treated as a trust described in § 1361(c)(2)(A)(i) and, for purposes of § 678(a), the beneficiary of such trust shall be treated as the owner of that portion of the trust which consists of stock in an S corporation with respect to which the election under § 1361(d)(2) is made.

Section 1362(d)(2)(A) provides that a beneficiary of a QSST (or his legal representative) may elect to have § 1361(d) apply. Section 1361(d)(2)(D) provides that an election under § 1362(d)(2) shall be effective up to 15 days and 2 months before the date of the election.

Section 1.1361-1(j)(6)(ii) of the Income Tax Regulations provides that the current income beneficiary of the trust must make the QSST election under § 1361(d)(2) by signing and filing with the service center with which the corporation files its income tax return the applicable form or statement including the information listed in § 1.1361-1(j)(6)(ii).

Section 1361(d)(3) provides that the term “qualified subchapter S trust” means a trust (A) the terms of which require that (i) during the life of the current income beneficiary, there shall be only one income beneficiary of the trust; (ii) any corpus distributed during the life of the current income beneficiary may be distributed only to such beneficiary; (iii) the income interest of the current income beneficiary in the trust shall terminate on the earlier of such beneficiary’s death or the termination of the trust; and (iv) upon the termination of the trust during the life of the current income beneficiary, the trust shall distribute all of its assets to that beneficiary; and (B) all of the income (within the meaning of § 643(b)) of which is distributed (or required to be distributed) currently to one individual who is a citizen or resident of the United States.

Section 1362(a)(1) provides that, except as provided in § 1362(g), a small business corporation may elect, in accordance with the provisions of § 1362, to be an S corporation.

Section 1362(d)(2) provides that an election under § 1362(a) shall be terminated whenever (at any time on or after the first day of the first taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation. A termination of an S corporation election under § 1362(d)(2) is effective on or after the date of cessation.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation was terminated under § 1362(d)(2) or (3); (2) the Secretary determines that the circumstances resulting in such termination were inadvertent; (3) no later than a reasonable period of time after discovery of the circumstances resulting in the termination, steps were taken so that the corporation is a small business corporation; and (4) the corporation, and each person who was a shareholder of the corporation at any time during the period specified under § 1362(f), agrees to make the adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary for that period, then, notwithstanding the circumstances resulting in such termination, the corporation shall be treated as an S corporation during the period specified by the Secretary.

Based solely on the facts submitted and the representations made, we conclude that X's S corporation election terminated on Date3, resulting from the failure of the beneficiaries of Trust1, Trust2, Trust3, Trust4, Trust5, Trust6, Trust7, Trust8, Trust9, Trust10, Trust11, Trust 12, Trust13, Trust14, Trust15, Trust16, Trust17, Trust18, Trust19, Trust20, and Trust21, to make the election under § 1361(d)(2) on behalf of each trust, respectively.

We further conclude that the termination was inadvertent within the meaning of § 1362(f). In addition, we conclude that, pursuant to the provisions of § 1362(f), X will be treated as an S corporation from Date3 and thereafter, provided that Trust1, Trust2, Trust3, Trust4, Trust5, Trust6, Trust7, Trust8, Trust9, Trust10, Trust11, Trust 12, Trust13, Trust14, Trust15, Trust16, Trust17, Trust18, Trust19, Trust20, Trust21 and Trust22 qualify as QSSTs and X's election to be an S corporation was valid and was not otherwise terminated under § 1362(d). Accordingly, the shareholders of X must include in income their pro rata share of the separately stated and nonseparately computed items of X as provided in § 1366, make any adjustments to basis as provided in § 1367, and take into account any distributions made by X as provided in § 1368. For this purpose, the beneficiaries of Trust1, Trust2, Trust3, Trust4, Trust5, Trust6, Trust7, Trust8, Trust9, Trust10, Trust11, Trust 12, Trust13, Trust14, Trust15, Trust16, Trust17, Trust18, Trust19, Trust20, and Trust21 shall be treated as the shareholders of X with respect to the stock of X held by each trust, respectively, beginning Date3 and

thereafter. In addition, the beneficiary of Trust22 shall be treated as the shareholder of X with respect to the stock of X held by Trust22, beginning Date5 and thereafter. If X or its shareholders fail to treat X as described above, this letter ruling shall be null and void.

This ruling is conditioned on the beneficiaries (or their legal representatives) of Trust1, Trust2, Trust3, Trust4, Trust5, Trust6, Trust7, Trust8, Trust9, Trust10, Trust11, Trust12, Trust13, Trust14, Trust15, Trust16, Trust17, Trust18, Trust19, Trust20, and Trust21 filing a QSST election under § 1361(d)(2) effective Date3, and on the beneficiary (or his legal representative) of Trust22 filing a QSST election effective Date5, with the appropriate service center within 60 days from the date of this letter. A copy of this letter should be attached to each QSST election so filed.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code, including whether X was or is a small business corporation under § 1361(b), or whether Trust1, Trust2, Trust3, Trust4, Trust5, Trust6, Trust7, Trust8, Trust9, Trust10, Trust11, Trust12, Trust13, Trust14, Trust15, Trust16, Trust17, Trust18, Trust19, Trust20, Trust21 and Trust22 are QSSTs within the meaning of § 1361(d)(3).

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely,

J. Thomas Hines
Chief, Branch 2
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes

cc: